

IN THE HIGH COURT OF BOMBAY AT GOA.

CRIMINAL REVISION APPLICATION NO. 10 OF 2003.

Shri Rajendra S. Naik,
r/o H. No. 100,
Bokadbag, Bandoda,
Ponda.

... Applicant.

Versus

State through Public
Prosecutor.

... Respondent.

Mr. S.G. Bhobe, Advocate for the Applicant.

Ms. W. Coutinho, Additional Public Prosecutor for the
Respondent/State.

Coram : P.V. HARDAS, J.

Date : 13th November 2003.

ORAL JUDGMENT.

The applicant/accused was convicted by the Judicial Magistrate, First Class, Ponda, by Judgment, dated 19th November 2001, in Criminal Case No. 85/2000/D, for offences punishable under Sections 279 and 338 of the Indian Penal Code and sentenced to simple imprisonment for one month and to pay fine of Rs. 500/- with a default stipulation of simple imprisonment for 10 days and simple imprisonment for one month and to pay fine of Rs. 1,000/- with a default stipulation of simple imprisonment for 15 days respectively. On the appeal being carried to the appellate Court, the appellate Court by its Judgment, dated 28th February 2003, in Criminal Appeal No. 63 of 2001, dismissed the appeal. The applicant/accused assails the concurrent finding recorded by the two Courts below in the present

Criminal Revision Application.

2. With the assistance of the learned counsel for the parties, I have perused the evidence of the witnesses examined on behalf of the prosecution.

3. P.W.1 and P.W.4 are the injured witnesses, whose motorcycle was dashed by the pick-up driven in a rash and negligent manner by the applicant/accused. The case of the applicant/accused in his statement under Section 313 of the Code of Criminal Procedure is that the motorcycle driven by P.Ws. 1 and 4 dashed his pick-up. In response to a question in the statement under Section 313 of the Code of Criminal Procedure the applicant/accused has admitted that the pick-up was driven at a fast speed. Be that as it may, the evidence of P.W.1 suggests that the pick-up driven by the applicant/accused came on the right side of the road and gave a dash to the motorcycle. This position is further reiterated by P.W.2, who is an independent witness, who had witnessed the accident. Accordingly, therefore, the learned appellate Court in paragraph 10 of the Judgment had recorded a finding that the vehicle driven by the applicant/accused came on the wrong side and gave a dash to the motorcycle driven by P.W.4.

4. Both the Courts below have, after appreciation

of the evidence, recorded a finding in respect of the guilt of the applicant/accused.

5. It is true that in a revision the revisional Court should not re-appreciate the evidence and disturb the concurrent finding of fact recorded by the two Courts below. However, if the Courts below have overlooked important evidence and, thereby, the finding stands vitiated, the revisional Court would be certainly entitled to re-appreciate the evidence. This is not the position in the present case, as both the Courts below have appreciated the evidence and have recorded a finding of guilt of the applicant/accused. There is no perversity in the reasoning of the Courts below to warrant interference in the finding recorded by the two Courts below.

6. In view of this, this Criminal Revision Application is sans merit and the same is dismissed. The bail bond of the applicant/accused stands cancelled. The applicant/accused to surrender to his bail within 2 weeks from today.

(P.V. HARDAS)
JUDGE.

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